

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Juan M. Bustos, #243391,)	
)	C/A No. 2:08-0280-MBS
Petitioner,)	
)	
vs.)	
)	O R D E R
State of South Carolina,)	
)	
Respondent.)	
_____)	

Petitioner Juan M. Bustos is an inmate in custody of the South Carolina Department of Corrections. Petitioner currently is housed at the Kirkland Correctional Institution in Columbia, South Carolina. Petitioner, proceeding pro se, filed a petition for writ of error coram nobis on January 28, 2008.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. The Magistrate Judge reviewed the petition pursuant to 28 U.S.C. §§ 1915, 1915A, and the Prison Litigation Reform Act of 1996. On March 4, 2008, the Magistrate Judge issued a Report and Recommendation in which he noted that the writ of error coram nobis has been abolished in federal civil practice. In addition, the Magistrate Judge noted that the writ, to the extent available, would need to be filed in the court in which judgment was rendered. The Magistrate Judge further determined that the petition could be construed as a successive petition under 28 U.S.C. § 2254, for which Petitioner had not received permission to file from the Court of Appeals for the Fourth Circuit. See 28 U.S.C. § 2244. Accordingly, the Magistrate Judge recommended that the within petition be summarily dismissed without prejudice and without issuance and service of process. Petitioner filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within action is dismissed without prejudice and without issuance of service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

March 31, 2008

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.